

UTAH E-COMMERCE INTEGRITY ACT

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

House Sponsor: Bradley G. Last

LONG TITLE

General Description:

This bill contains prohibitions and other provisions concerning Internet-related conduct, including phishing, pharming, spyware, and cybersquatting.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits a person from facilitating certain types of fraud and injury through use of electronic communications;
- ▶ allows for the removal of domain names and online content by an Internet registrar or Internet service provider under certain circumstances;
- ▶ prohibits contrary laws enacted by a political subdivision of the state;
- ▶ forbids the use of various types of software, commonly called spyware, if used for certain purposes;
- ▶ provides exceptions from spyware provisions for various types of communications and interactions, including authorized diagnostics;
- ▶ prohibits the registration of domain names under certain circumstances, commonly referred to as cybersquatting;
- ▶ provides civil penalties for a violation of cybersquatting provisions; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

30 This bill provides an effective date.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **70-3a-402**, as last amended by Laws of Utah 2008, Chapter 258

34 ENACTS:

35 **13-40-103**, Utah Code Annotated 1953

36 **13-40-203**, Utah Code Annotated 1953

37 **13-40-204**, Utah Code Annotated 1953

38 **13-40-303**, Utah Code Annotated 1953

39 **13-40-402**, Utah Code Annotated 1953

40 **70-3a-309**, Utah Code Annotated 1953

41 REPEALS AND REENACTS:

42 **13-40-101**, as enacted by Laws of Utah 2004, Chapter 363

43 **13-40-102**, as last amended by Laws of Utah 2005, Chapter 168

44 **13-40-201**, as last amended by Laws of Utah 2005, Chapter 168

45 **13-40-202**, as enacted by Laws of Utah 2005, Chapter 168

46 **13-40-301**, as last amended by Laws of Utah 2005, Chapter 168

47 **13-40-302**, as last amended by Laws of Utah 2005, Chapter 168

48 **13-40-401**, as enacted by Laws of Utah 2004, Chapter 363



50 *Be it enacted by the Legislature of the state of Utah:*

51 Section 1. Section **13-40-101** is repealed and reenacted to read:

52 **CHAPTER 40. UTAH E-COMMERCE INTEGRITY ACT**

53 **Part 1. General Provisions**

54 **13-40-101. Title.**

55 This chapter is known as the "Utah E-Commerce Integrity Act."

56 Section 2. Section **13-40-102** is repealed and reenacted to read:

57 **13-40-102. Definitions.**

58 As used in this chapter:

59 (1) (a) "Cause to be copied" means to distribute or transfer computer software, or any
60 component of computer software.

61 (b) "Cause to be copied" does not include providing:

62 (i) transmission, routing, intermediate temporary storage, or caching of software;

63 (ii) a storage or hosting medium, such as a compact disk, website, or computer server
64 through which the software was distributed by a third party; or

65 (iii) an information location tool, such as a directory, index, reference, pointer, or
66 hypertext link, through which the user of the computer located the software.

67 (2) (a) "Computer software" means a sequence of instructions written in any
68 programming language that is executed on a computer.

69 (b) "Computer software" does not include a data component of a webpage that is not
70 executable independently of the webpage.

71 (3) "Computer virus" means a computer program or other set of instructions that is
72 designed to degrade the performance of or disable a computer or computer network and is
73 designed to have the ability to replicate itself on another computer or computer network
74 without the authorization of the owner of the other computer or computer network.

75 (4) "Damage" means any significant impairment to the:

76 (a) performance of a computer; or

77 (b) integrity or availability of data, software, a system, or information.

78 (5) "Execute," when used with respect to computer software, means the performance
79 of the functions or the carrying out of the instructions of the computer software.

80 (6) "False pretenses" means the representation of a fact or circumstance that is not true
81 and is calculated to mislead.

82 (7) (a) "Identifying information" means any information that can be used to access a
83 person's financial accounts or to obtain goods and services, including the person's:

84 (i) address;

85 (ii) birth date;

86 (iii) Social Security number;

87 (iv) driver license number;

88 (v) non-driver governmental identification number;

89 (vi) telephone number;

90 (vii) bank account number;

91 (viii) student identification number;

92 (ix) credit or debit card number;

93 (x) personal identification number;

94 (xi) unique biometric data;

95 (xii) employee or payroll number;

96 (xiii) automated or electronic signature;

97 (xiv) computer image file;

98 (xv) photograph; or

99 (xvi) computer screen name or password.

100 (b) "Identifying information" does not include information that is lawfully obtained
101 from publicly available information, or from federal, state, or local government records
102 lawfully made available to the general public.

103 (8) "Intentionally deceptive" means any of the following:

104 (a) an intentionally and materially false or fraudulent statement;

105 (b) a statement or description that intentionally omits or misrepresents material
106 information in order to deceive an owner or operator of a computer; or

107 (c) an intentional and material failure to provide a notice to an owner or operator
108 concerning the installation or execution of computer software, for the purpose of deceiving the
109 owner or operator.

110 (9) "Internet" means the global information system that is logically linked together by
111 a globally unique address space based on the Internet protocol (IP), or its subsequent
112 extensions, and that is able to support communications using the transmission control
113 protocol/Internet protocol (TCP/IP) suite, or its subsequent extensions, or other IP-compatible

114 protocols, and that provides, uses, or makes accessible, either publicly or privately, high-level
115 services layered on communications and related infrastructure.

116 (10) "Internet service provider" means:

117 (a) an Internet service provider, as defined in Section 76-10-1230; or

118 (b) a hosting company, as defined in Section 76-10-1230.

119 (11) "Message" means a graphical or text communication presented to an authorized
120 user of a computer.

121 (12) (a) "Owner or operator" means the owner or lessee of a computer, or a person
122 using a computer with the owner's or lessee's authorization.

123 (b) "Owner or operator" does not include a person who owned a computer before the
124 first retail sale of the computer.

125 (13) "Person" means any individual, partnership, corporation, limited liability
126 company, or other organization, or any combination thereof.

127 (14) "Personally identifiable information" means any of the following information if it
128 allows the entity holding the information to identify the owner or operator of a computer:

129 (a) the first name or first initial in combination with the last name and a home or other
130 physical address including street name;

131 (b) a personal identification code in conjunction with a password required to access an
132 identified account, other than a password, personal identification number, or other
133 identification number transmitted by an authorized user to the issuer of the account or its
134 agent;

135 (c) a Social Security number, tax identification number, driver license number,
136 passport number, or any other government-issued identification number; or

137 (d) an account balance, overdraft history, or payment history that personally identifies
138 an owner or operator of a computer.

139 (15) "Webpage" means a location that has a single uniform resource locator (URL)
140 with respect to the World Wide Web or another location that can be accessed on the Internet.

141 Section 3. Section **13-40-103** is enacted to read:

142 **13-40-103. Application of chapter.**

143 This chapter applies to conduct involving a computer, software, or an advertisement
144 located in, sent to, or displayed in this state.

145 Section 4. Section **13-40-201** is repealed and reenacted to read:

146 **Part 2. Phishing and Pharming**

147 **13-40-201. Phishing and pharming.**

148 (1) A person is guilty of phishing if, with intent to defraud or injure an individual, or
149 with knowledge that the person is facilitating a fraud or injury to be perpetrated by another:

150 (a) the person makes a communication under false pretenses purporting to be by or on
151 behalf of a legitimate business, without the authority or approval of the legitimate business;

152 and

153 (b) the person uses the communication to induce, request, or solicit another person to
154 provide identifying information or property.

155 (2) A person is guilty of pharming if, with intent to defraud or injure another, or with
156 knowledge that the person is facilitating a fraud or injury to be perpetrated by another, the
157 person:

158 (a) creates or operates a webpage that represents itself as belonging to or being
159 associated with a legitimate business, without the authority or approval of the legitimate
160 business, if that webpage may induce any user of the Internet to provide identifying
161 information or property; or

162 (b) alters a setting on a user's computer or similar device or software program through
163 which the user may search the Internet, causing any user of the Internet to view a
164 communication that represents itself as belonging to or being associated with a legitimate
165 business, if the message has been created or is operated without the authority or approval of
166 the legitimate business and induces, requests, or solicits any user of the Internet to provide
167 identifying information or property.

168 Section 5. Section **13-40-202** is repealed and reenacted to read:

169 **13-40-202. Removal of domain name or content -- Liability.**

170 If an Internet registrar or Internet service provider believes in good faith that an Internet
171 domain name controlled or operated by the Internet registrar or Internet service provider, or
172 content residing on an Internet website or other online location controlled or operated by the
173 Internet registrar or Internet service provider, is used to engage in a violation of this part, the
174 Internet registrar or Internet service provider is not liable under any provision of the laws of
175 this state or of any political subdivision of the state for removing or disabling access to the
176 Internet domain name or other content.

177 Section 6. Section **13-40-203** is enacted to read:

178 **13-40-203. Application of part.**

179 (1) This part applies to the discovery of a phishing or pharming incident that occurs
180 on or after July 1, 2010.

181 (2) This part does not apply to a telecommunications provider's or Internet service
182 provider's good faith transmission or routing of, or intermediate temporary storing or caching
183 of, identifying information.

184 Section 7. Section **13-40-204** is enacted to read:

185 **13-40-204. Relation to other law.**

186 The conduct prohibited by this part is of statewide concern, and this part's provisions
187 supersede and preempt any provision of law of a political subdivision of the state.

188 Section 8. Section **13-40-301** is repealed and reenacted to read:

189 **Part 3. Spyware Protection**

190 **13-40-301. Prohibition on the use of software.**

191 A person who is not an owner or operator of a computer may not cause computer
192 software to be copied on the computer knowingly, with conscious avoidance of actual
193 knowledge, or willfully, if the software is used to:

194 (1) modify, through intentionally deceptive means, settings of a computer controlling:

195 (a) the webpage that appears when an owner or operator launches an Internet browser
196 or similar computer software used to access and navigate the Internet;

197 (b) the default provider or web proxy that an owner or operator uses to access or

198 search the Internet; or

199 (c) an owner's or an operator's list of bookmarks used to access webpages;

200 (2) collect, through intentionally deceptive means, personally identifiable information:

201 (a) through the use of a keystroke-logging function that records all or substantially all
202 keystrokes made by an owner or operator of a computer and transfers that information from
203 the computer to another person;

204 (b) in a manner that correlates personally identifiable information with data
205 concerning all or substantially all of the webpages visited by an owner or operator, other than
206 webpages operated by the person providing the software, if the computer software was
207 installed in a manner designed to conceal from all authorized users of the computer the fact
208 that the software is being installed; or

209 (c) by extracting from the hard drive of an owner's or an operator's computer, an
210 owner's or an operator's Social Security number, tax identification number, driver license
211 number, passport number, any other government-issued identification number, an account
212 balance, or overdraft history for a purpose unrelated to any of the purposes of the software or
213 service described to an authorized user;

214 (3) prevent, through intentionally deceptive means, an owner's or an operator's
215 reasonable efforts to block or disable the installation or execution of computer software by
216 causing computer software that the owner or operator has properly removed or disabled to
217 automatically reinstall or reactivate on the computer without the authorization of an authorized
218 user;

219 (4) intentionally misrepresent that computer software will be uninstalled or disabled
220 by an owner's or an operator's action;

221 (5) through intentionally deceptive means, remove, disable, or render inoperative
222 security, antispyware, or antivirus computer software installed on an owner's or an operator's
223 computer;

224 (6) enable use of an owner's or an operator's computer to:

225 (a) access or use a modem or Internet service for the purpose of causing damage to an

226 owner's or an operator's computer or causing an owner or operator, or a third party affected by
227 that conduct, to incur financial charges for a service that the owner or operator did not
228 authorize;

229 (b) open multiple, sequential, stand-alone messages in an owner's or an operator's
230 computer without the authorization of an owner or operator and with knowledge that a
231 reasonable computer user could not close the messages without turning off the computer or
232 closing the software application in which the messages appear, unless the communication
233 originated from the computer's operating system, a software application the user activated, or a
234 service provider that the user chose to use, or was presented for any of the purposes described
235 in Section 13-40-303; or

236 (c) transmit or relay commercial electronic mail or a computer virus from the
237 computer, if the transmission or relay is initiated by a person other than the authorized user
238 without the authorization of an authorized user;

239 (7) modify, without the authorization of an owner or operator, any of the following
240 settings related the computer's access to, or use of, the Internet:

241 (a) settings that protect information about an owner or operator for the purpose of
242 taking personally identifiable information of the owner or operator;

243 (b) security settings, for the purpose of causing damage to a computer; or

244 (c) settings that protect the computer from the uses identified in Subsection (6); or

245 (8) prevent, without the authorization of an owner or operator, an owner's or an
246 operator's reasonable efforts to block the installation of, or to disable, computer software by:

247 (a) presenting the owner or operator with an option to decline installation of computer
248 software with knowledge that, when the option is selected by the authorized user, the
249 installation nevertheless proceeds;

250 (b) falsely representing that computer software has been disabled;

251 (c) requiring in an intentionally deceptive manner the user to access the Internet to
252 remove the software with knowledge or reckless disregard of the fact that the software
253 frequently operates in a manner that prevents the user from accessing the Internet;

254 (d) changing the name, location, or other designation information of the software for
255 the purpose of preventing an authorized user from locating the software to remove it;

256 (e) using randomized or intentionally deceptive filenames, directory folders, formats,
257 or registry entries for the purpose of avoiding detection and removal of the software by an
258 authorized user;

259 (f) causing the installation of software in a particular computer directory or in
260 computer memory for the purpose of evading an authorized user's attempt to remove the
261 software from the computer; or

262 (g) requiring, without the authority of the owner of the computer, that an authorized
263 user obtain a special code or download software from a third party to uninstall the software.

264 Section 9. Section **13-40-302** is repealed and reenacted to read:

265 **13-40-302. Other prohibited conduct.**

266 A person who is not an owner or operator of a computer may not, with regard to the
267 computer:

268 (1) induce an owner or operator to install a computer software component onto the
269 owner's or the operator's computer by intentionally misrepresenting that installing the
270 computer software is necessary for security or privacy reasons or in order to open, view, or
271 play a particular type of content; or

272 (2) use intentionally deceptive means to cause the execution of a computer software
273 component with the intent of causing the computer to use the computer software component in
274 a manner that violates any other provision of this chapter.

275 Section 10. Section **13-40-303** is enacted to read:

276 **13-40-303. Exceptions.**

277 Sections 13-40-301 and 13-40-302 do not apply to the monitoring of, or interaction
278 with, an owner's or an operator's Internet or other network connection, service, or computer, by
279 a telecommunications carrier, cable operator, computer hardware or software provider, or
280 provider of information service or interactive computer service for network or computer
281 security purposes, diagnostics, technical support, maintenance, repair, network management,

282 authorized updates of computer software or system firmware, authorized remote system
283 management, or detection or prevention of the unauthorized use of or fraudulent or other
284 illegal activities in connection with a network, service, or computer software, including
285 scanning for and removing computer software prescribed under this chapter.

286 Section 11. Section **13-40-401** is repealed and reenacted to read:

287 **Part 4. Enforcement**

288 **13-40-401. Phishing and pharming violations.**

289 (1) A civil action against a person who violates any provision of Part 2, Phishing and
290 Pharming, may be filed by:

291 (a) an Internet service provider that is adversely affected by the violation;

292 (b) an owner of a webpage, computer server, or a trademark that is used without
293 authorization in the violation; or

294 (c) the attorney general.

295 (2) A person permitted to bring a civil action under Subsection (1) may obtain either
296 actual damages for a violation of this chapter or a civil penalty not to exceed \$150,000 per
297 violation of Part 2, Phishing and Pharming.

298 (3) A violation of Part 2, Phishing and Pharming, by a state-chartered or licensed
299 financial institution is enforceable exclusively by the financial institution's primary state
300 regulator.

301 Section 12. Section **13-40-402** is enacted to read:

302 **13-40-402. Spyware protection violations.**

303 (1) The attorney general, an Internet service provider, or a software company that
304 expends resources in good faith assisting authorized users harmed by a violation of Part 3,
305 Spyware Protection, or a trademark owner whose mark is used to deceive authorized users in
306 violation of Part 3, Spyware Protection, may bring a civil action against a person who violates
307 Part 3, Spyware Protection, to recover:

308 (a) actual damages and liquidated damages of at least \$1,000 per violation of Part 3,
309 Spyware Protection, not to exceed \$1,000,000 for a pattern or practice of violations; and

310 (b) attorney fees and costs.

311 (2) The court may increase a damage award to an amount equal to not more than three
312 times the amount otherwise recoverable under Subsection (1) if the court determines that the
313 defendant committed the violation willfully and knowingly.

314 (3) The court may reduce liquidated damages recoverable under Subsection (1) to a
315 minimum of \$100, not to exceed \$100,000 for each violation, if the court finds that the
316 defendant established and implemented practices and procedures reasonably designed to
317 prevent a violation of Part 3, Spyware Protection.

318 (4) In the case of a violation of Subsection 13-40-301(6)(a) that causes a
319 telecommunications carrier or provider of voice over Internet protocol service to incur costs
320 for the origination, transport, or termination of a call triggered using the modem or
321 Internet-capable device of a customer of the telecommunications carrier or provider of voice
322 over Internet protocol as a result of the violation, the telecommunications carrier or provider of
323 voice over Internet protocol may bring a civil action against the violator:

324 (a) to recover the charges the telecommunications carrier or provider of voice over
325 Internet protocol is required to pay to another carrier or to an information service provider as a
326 result of the violation, including charges for the origination, transport, or termination of the
327 call;

328 (b) to recover the costs of handling customer inquiries or complaints with respect to
329 amounts billed for the calls;

330 (c) to recover reasonable attorney fees and costs; and

331 (d) for injunctive relief.

332 (5) For purposes of a civil action under Subsections (1), (2), and (3), a single action or
333 conduct that violates more than one provision of Part 3, Spyware Protection, shall be
334 considered as multiple violations based on the number of provisions violated.

335 Section 13. Section **70-3a-309** is enacted to read:

336 **70-3a-309. Cybersquatting.**

337 (1) (a) A person is liable in a civil action by the owner of a mark, including a personal

338 name, which is a mark for purposes of this section, if, without regard to the goods or services
339 of the person or the mark's owner, the person:

340 (i) has a bad faith intent to profit from the mark, including a personal name; and

341 (ii) for any length of time registers, acquires, traffics in, or uses a domain name in, or
342 belonging to any person in, this state that:

343 (A) in the case of a mark that is distinctive at the time of registration of the domain
344 name, is identical or confusingly similar to the mark;

345 (B) in the case of a famous mark that is famous at the time of registration of the
346 domain name, is identical or confusingly similar to or dilutive of the mark; or

347 (C) is a trademark, word, or name protected by reason of 18 U.S.C. Sec. 706 or 36
348 U.S.C. Sec. 220506.

349 (b) (i) In determining whether a person has a bad faith intent described in Subsection
350 (1)(a), a court may consider all relevant factors, including:

351 (A) the trademark or other intellectual property rights of the person, if any, in the
352 domain name;

353 (B) the extent to which the domain name consists of the legal name of the person or a
354 name that is otherwise commonly used to identify that person;

355 (C) the person's prior use, if any, of the domain name in connection with the bona fide
356 offering of any goods or services;

357 (D) the person's bona fide noncommercial or fair use of the mark in a site accessible
358 under the domain name;

359 (E) the person's intent to divert consumers from the mark owner's online location to a
360 site accessible under the domain name that could harm the goodwill represented by the mark,
361 either for commercial gain or with the intent to tarnish or disparage the mark, by creating a
362 likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site;

363 (F) the person's offer to transfer, sell, or otherwise assign, or solicitation of the
364 purchase, transfer, or assignment of the domain name to the mark owner or any third party for
365 financial gain without having used, or having an intent to use, the domain name in the bona

366 vide offering of any goods or services, or the person's prior conduct indicating a pattern of
367 such conduct;

368 (G) the person's provision of material and misleading false contact information when
369 applying for the registration of the domain name, the person's intentional failure to maintain
370 accurate contact information, or the person's prior conduct indicating a pattern of such
371 conduct;

372 (H) the person's registration or acquisition of multiple domain names that the person
373 knows are identical or confusingly similar to another's mark that is distinctive at the time of
374 registration of the domain names, or is dilutive of another's famous mark that is famous at the
375 time of registration of the domain names, without regard to the goods or services of the person
376 or the mark owner; and

377 (I) the extent to which the mark incorporated in the person's domain name registration
378 is or is not distinctive and famous.

379 (ii) Bad faith intent described in Subsection (1)(a) may not be found in any case in
380 which the court determines that the person believed and had reasonable grounds to believe that
381 the use of the domain name was a fair use or otherwise lawful.

382 (c) In a civil action involving the registration, trafficking, or use of a domain name
383 under this section, a court may order the forfeiture or cancellation of the domain name or the
384 transfer of the domain name to the owner of the mark.

385 (d) (i) A person is liable for using a domain name under Subsection (1)(a) only if that
386 person is the domain name registrant or that registrant's authorized licensee, affiliate, domain
387 name registrar, domain name registry, or other domain name registration authority that
388 knowingly assists a violation of this chapter by the registrant.

389 (ii) A person may not be held liable under this section absent a showing of bad faith
390 intent to profit from the registration or maintenance of the domain name.

391 (iii) For purposes of this section, a "showing of bad faith intent to profit" shall be
392 interpreted in the same manner as under 15 U.S.C. Sec. 1114(2)(D)(iii).

393 (e) As used in this section, the term "traffics in" refers to transactions that include

394 sales, purchases, loans, pledges, licenses, exchanges of currency, and any other transfer for
395 consideration or receipt in exchange for consideration.

396 (2) (a) The owner of a mark registered with the U.S. Patent and Trademark Office or
397 under this chapter may file an in rem civil action against a domain name in the district court if
398 the owner is located in the state and if:

399 (i) the domain name violates any right of the owner of a mark registered in the Patent
400 and Trademark Office or registered under this chapter; and

401 (ii) the court finds that the owner:

402 (A) is not able to obtain personal jurisdiction over a person who would be a defendant
403 in a civil action under Subsection (1); or

404 (B) through due diligence was not able to find a person who would be a defendant in a
405 civil action under Subsection (1) by:

406 (I) sending a notice of the alleged violation and intent to proceed under this
407 Subsection (2)(a) to the registrant of the domain name at the postal and e-mail address
408 provided by the registrant to the registrar; and

409 (II) publishing notice of the action as the court may direct promptly after filing the
410 action.

411 (b) Completion of the actions required by Subsection (2)(a)(ii) constitutes service of
412 process.

413 (c) In an in rem action under this Subsection (2), a domain name is considered to be
414 located in the judicial district in which:

415 (i) the domain name registrar, registry, or other domain name authority that registered
416 or assigned the domain name is located; or

417 (ii) documents sufficient to establish control and authority regarding the disposition of
418 the registration and use of the domain name are deposited with the court.

419 (d) (i) The remedies in an in rem action under this Subsection (2) are limited to a court
420 order for the forfeiture or cancellation of the domain name or the transfer of the domain name
421 to the owner of the mark.

422 (ii) Upon receipt of written notification of a filed, stamped copy of a complaint filed
423 by the owner of a mark in the district court under this Subsection (2), the domain name
424 registrar, domain name registry, or other domain name authority shall:

425 (A) expeditiously deposit with the court documents sufficient to establish the court's
426 control and authority regarding the disposition of the registration and use of the domain name
427 to the court; and

428 (B) not transfer, suspend, or otherwise modify the domain name during the pendency
429 of the action, except upon order of the court.

430 (iii) The domain name registrar or registry or other domain name authority is not liable
431 for injunctive or monetary relief under this section, except in the case of bad faith or reckless
432 disregard, which includes a willful failure to comply with a court order.

433 (3) The civil actions and remedies established by Subsection (1) and the in rem action
434 established in Subsection (2) do not preclude any other applicable civil action or remedy.

435 (4) The in rem jurisdiction established under Subsection (2) does not preclude any
436 other jurisdiction, whether in rem or personal.

437 Section 14. Section **70-3a-402** is amended to read:

438 **70-3a-402. Infringement.**

439 (1) Subject to Section 70-3a-104 and Subsection (2), any person is liable in a civil
440 action brought by the registrant for any and all of the remedies provided in Section 70-3a-404,
441 if that person:

442 (a) uses a reproduction, counterfeit, copy, or colorable imitation of a mark registered
443 under this chapter:

444 (i) without the consent of the registrant; and

445 (ii) in connection with the sale, distribution, offering for sale, or advertising of any
446 goods or services on or in connection with which that use is likely to cause confusion, mistake,
447 or to deceive as to the source of origin, nature, or quality of those goods or services; or

448 (b) reproduces, counterfeits, copies, or colorably imitates any mark and applies the
449 reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages,

450 wrappers, receptacles, or advertisements intended to be used upon or in connection with the
451 sale or other distribution in this state of goods or services.

452 (2) Under Subsection (1)(b), the registrant is not entitled to recover profits or damages
453 unless the act described in Subsection (1)(b) has been committed with the intent:

454 (a) to cause confusion or mistake; or

455 (b) to deceive.

456 (3) In a civil action for a violation of Section 70-3a-309:

457 (a) the plaintiff may recover court costs and reasonable attorney fees; and

458 (b) the plaintiff may elect, at any time before final judgment is entered by the district
459 court, to recover, instead of actual damages and profits, an award of statutory damages in the
460 amount of not less than \$1,000 and not more than \$100,000 per domain name, as the court
461 considers just.

462 (4) Statutory damages awarded under Subsection (3)(b) are presumed to be \$100,000
463 per domain name if there is a pattern and practice of infringements committed willfully for
464 commercial gain.

465 Section 15. **Effective date.**

466 This bill takes effect on July 1, 2010, except that Sections 70-3a-309 and 70-3a-402
467 take effect on May 11, 2010.